A

AXA AFFIN GENERAL INSURANCE BHD v. ALW CAR WORKSHOP SDN BHD

COURT OF APPEAL, PUTRAJAYA
MOHD ZAWAWI SALLEH JCA
VERNON ONG LAM KIAT JCA
B ABDUL RAHMAN SEBLI JCA
[CIVIL APPEAL NO: W-02(NCC)(W)-1432-09-2015]
13 APRIL 2016

C ***INSURANCE:*** *Claims – Exaggerated claim – Repudiation of liability by insurer – Whether insured submitted fraudulent claim – Whether damages claimed grossly exaggerated – Whether exaggerated claim tainted with fraud – Whether insurer's repudiation of liability valid*

D The respondent's ('plaintiff') claim for indemnity against the appellant ('defendant') was made pursuant to an insurance policy ('policy'). Under the policy, the defendant agreed to indemnify the plaintiff against any loss caused by fire to, amongst others, the plaintiff's premises and customers' vehicles held in custody at the plaintiff's workshop. The insured sum under the policy was the sum of RM1.4 million. A fire broke out and engulfed the plaintiff's premises and destroyed the plaintiff's workshop. Subsequently, the plaintiff E submitted to the defendant a list of the plaintiff's claim for the loss suffered in the sum of RM1,699,850. The plaintiff then submitted a revised claim to the defendant claiming RM1,712,560 for the loss and damage suffered. The defendant repudiated liability under the policy on the grounds, *inter alia*, that exaggerated claims were made for several vehicles which were in fact in a F wrecked state prior to the fire. The Judicial Commissioner ('JC') found that the defendant failed to prove beyond a reasonable doubt that the plaintiff made a fraudulent claim and allowed the plaintiff's claim. Hence, the defendant appealed. The issue that arose for determination was whether the plaintiff's exaggerated claim was tainted with fraud.

G **Held (allowing appeal with costs):**
Per Vernon Ong Lam Kiat JCA delivering the judgment of the court

(1) The plaintiff's initial claim of RM1,699,850 was predicated on the particulars set out in the plaintiff's claims list. The plaintiff's claim was subsequently revised to RM1,712,560 according to the plaintiff's H revised list. Eventually, the plaintiff's claim was revised to RM237,452.11 on the first day of the trial in the High Court. In revising its claim to RM237,452.11, the plaintiff effectively adopted *in toto*, the figures advised by the adjusters. The findings of the adjusters were never challenged by the plaintiff. Accordingly, the findings of the adjusters that I except for six vehicles that were found by the adjusters to be *bona fide* claims, the claim in respect of the remaining 63 vehicles were tainted

with fraud must be deemed to have been accepted. Therefore, the plaintiff's claim as contained in the two claims lists were exaggerated. (paras 36, 37 & 39)

(2) Although exaggeration in itself is not automatically fraud, a fraudulent intent can properly be inferred from the presentation of a deliberately inflated claim. Therefore, the plaintiff had made a false statement in the claims lists with the knowledge that it is false. (para 40)

(3) The entire claim was liable to be defeated on the ground that the plaintiff failed to exercise good faith in its dealings with the defendant. Since the plaintiff made a total claim knowing it to be a false claim, the plaintiff could not later recover for a partial loss even if the policy applies to the loss that has happened. Accordingly, it would not avail the plaintiff to argue that its claim on the figure of RM237,451.11 advised by the adjusters should be allowed. (para 41)

***Bahasa Malaysia** Translation*

Tuntutan ganti rugi responden ('plaintif') terhadap perayu ('defendan) dibuat berdasarkan suatu polisi insurans ('polisi'). Di bawah polisi tersebut, defendan bersetuju untuk menanggung ganti rugi plaintif terhadap apa-apa kerugian yang disebabkan oleh kebakaran, antara lain, kepada premis plaintif dan kenderaan pelanggan yang berada dalam jagaan bengkel plaintif. Jumlah yang diinsuranskan di bawah polisi tersebut adalah RM1.4 juta. Satu kebakaran berlaku di premis plaintif dan memusnahkan bengkel plaintif. Kemudian, plaintif mengemukakan kepada defendan senarai tuntutan plaintif untuk kerugian yang dialami berjumlah RM1,699,850. Plaintif kemudiannya mengemukakan tuntutan yang disemak semula kepada defendan dan menuntut RM1,712,560 bagi kerugian dan kerosakan yang ditanggung. Defendan menolak liabiliti di bawah polisi tersebut atas alasan, antara lain, bahawa tuntutan yang melampau dibuat untuk beberapa kenderaan yang sebenarnya dalam keadaan rosak sebelum kebakaran berlaku. Pesuruhjaya Kehakiman ('JC') mendapati bahawa defendan gagal membuktikan, tanpa keraguan munasabah, bahawa plaintif membuat tuntutan palsu dan membenarkan tuntutan plaintif. Oleh itu, defendan merayu. Isu yang dibangkitkan untuk penentuan adalah sama ada tuntutan melampau plaintif tercemar oleh frod.

Diputuskan (membenarkan rayuan)
Oleh Vernon Ong Lam Kiat HMR menyampaikan penghakiman mahkamah:

(1) Tuntutan awal plaintif yang berjumlah RM1,699,850 adalah berdasarkan butir-butir yang dinyatakan dalam senarai tuntutan plaintif. Tuntutan plaintif kemudiannya disemak semula kepada RM1,712,560 mengikut senarai tuntutan plaintif yang disemak semula. Akhirnya, tuntutan plaintif disemak semula kepada RM237,452.11 pada hari

pertama perbicaraan di Mahkamah Tinggi. Dengan menyemak semula tuntutan kepada RM237,452.11, plaintif menerima secara keseluruhan angka-angka yang dinasihatkan oleh adjuster. Penemuan adjuster tidak pernah dicabar oleh plaintif. Oleh itu, dapatan adjuster bahawa kecuali enam kenderaan yang mana tuntutan terhadapnya didapati tuntutan *bona fide,* tuntutan terhadap baki 63 kenderaan tercemar oleh frod mesti dianggap sebagai diterima. Oleh itu, tuntutan plaintif seperti yang terkandung dalam dua senarai tuntutan adalah melampau.

(2) Walaupun tuntutan melampau tidak secara automatik menjadi frod, niat frod boleh disimpulkan daripada pengemukaan tuntutan melampau yang disengajakan. Oleh itu, plaintif membuat kenyataan palsu dalam senarai tuntutan dengan pengetahuan bahawa ia adalah palsu.

(3) Keseluruhan tuntutan haruslah ditolak atas alasan plaintif tidak jujur dalam urusannya dengan defendan. Oleh kerana plaintif membuat jumlah tuntutan dengan mengetahui bahawa ia adalah tuntutan palsu, plaintif tidak boleh membuat tuntutan untuk ganti rugi separa walaupun polisi tersebut terpakai kepada kerugian yang berlaku. Oleh itu, adalah tidak berfaedah kepada plaintif untuk menghujahkan bahawa tuntutan pada angka RM237,451.11 yang dinasihatkan oleh adjuster harus dibenarkan.

Case(s) referred to:

Banque Financiere de la Cite SA v. Skandia (U.K.) Insurance Company Ltd [1991] 2 AC 249 ***(refd)***

Baron Akerhielm v. Rolf De Mare [1959] AC 789 PC ***(refd)***

Chapman v. Pole (1870) 22 LT 306 ***(refd)***

Danepoint Ltd v. Allied Underwriting Insurance Ltd [2006] Lloyd's Rep IR 429 ***(refd)***

Dome Mining Corp Ltd v. Drysdale [1931] 41 Lloyd's Rep 109 ***(refd)***

Globe Trawlers Pte Ltd v. National Employers Mutual General Insurance Association Ltd & Anor [1989] 1 CLJ 831; [1989] 2 CLJ (Rep) 924 HC ***(refd)***

Manifest Shipping Co Ltd v. Uni-Polaris Shipping Co Ltd, The Star Sea [2001] Lloyd's Rep IR 247 ***(refd)***

Modern Universal Sdn Bhd v. MSIG Insurance (Malaysia) Bhd [2014] 3 CLJ 745 HC ***(refd)***

Re Carr & The Sun Fire Insurance Company [1897] 13 TLR 186 ***(refd)***

Royal Boskalis Westminster v. Mountain [1997] LRLR 523 ***(refd)***

Sen Hua Tat Furniture Sdn Bhd v. Kurnia Insurans (Malaysia) Bhd [2009] 1 LNS 1180 HC ***(refd)***

Sinnaiyah & Sons Sdn Bhd v. Damai Setia Sdn Bhd [2015] 7 CLJ 584 FC ***(refd)***

Smith v. Queen Insurance Co [1868] 12 NBR (1 Han) 311 ***(refd)***

Superwood Holdings Plc v. Sun Alliance & London Insurance Plc [1995] 3 IR 303 ***(refd)***

Transthene v. Royal Insurance Co [1996] LRLR 32 ***(refd)***

Wong Cheong Kong Sdn Bhd v. Prudential Assurance Sdn Bhd [1998] 1 CLJ 916 HC ***(refd)***

Other source(s) referred to:

Poh Chu Chai, *Law Of Insurance,* 3rd edn, p 570

MacGillivary on Insurance Law, 13th edn, Sweet & Maxwell, para 21-064

For the plaintiff - Gurmukh Singh & Iveender Kaur; M/s Isharidah Ho Chong & Menon
For the defendant - Samreet Singh Sagoo & Ananth Nair; M/s Dave Anan

[Editor's note: For the High Court judgment, please see ALW Car Workshop Sdn Bhd v. AXA Affin General Insurance Bhd [2015] 1 LNS 1095 (overruled).]

Reported by Sandra Gabriel

JUDGMENT

Vernon Ong Lam Kiat JCA:

Introduction

[1] The plaintiff's claim for indemnity against the defendant insurer was made pursuant to a policy of insurance known as Motor Repairers Protection Plan Policy ("the policy"). This appeal is against the decision of the learned Judicial Commissioner ("JC") on 13 May 2015, allowing the plaintiff's claim in the sum of RM237,452.11 together with interest and costs. In this judgment, the parties shall be referred to as they were in the court below.

The Salient Facts

[2] Under the policy which was in force from 20 December 2012 to 19 December 2013, the defendant agreed to indemnify the plaintiff against any loss caused by fire to the plaintiff's building, workshop equipment, stock in trade and customers' vehicles held in trust or custody at the plaintiff's premises. The insured sum under the policy is the sum of RM1.4 million.

[3] On 21 May 2013, a fire broke out and engulfed the plaintiff's premises and destroyed the plaintiff's care repair workshop.

[4] On 24 June 2013, the plaintiff submitted to the defendant a list of the plaintiff's claim ("the plaintiff's claims list") for the loss suffered in the sum of RM1,699,850.

[5] Subsequently, the plaintiff filled up a claim form on 25 June 2013 ("the claim form") relating to the fire on 21 May 2013. Neither the total amount of the claim nor the particulars of the plaintiff's claim were set out in the claim form.

[6] On 9 July 2013, the plaintiff submitted a revised claim ("the plaintiff's revised claim") to the defendant claiming for RM1,712,560 for the loss and damage suffered due to the fire.

[7] By a letter dated 4 March 2014 addressed to the plaintiff, the defendant's solicitors repudiated liability under the policy on a number of grounds. First, most of the 69 vehicles claimed as "customer vehicles" were in doubt because these vehicles did not have valid insurance policies. Second, the plaintiff had submitted false claims in respect of a few vehicles which were not affected or damaged by the fire. Third, some vehicles which

were claimed as being in normal working condition were observed to have violent accident wreckage marks. Fourth, there were vehicles devoid of ownership details, vehicle numbers and not sighted by the adjusters. Fifth, exaggerated claims were made for several vehicles which were in fact in a crumpled/wrecked state prior to the fire. Lastly, at least three vehicles were falsely claimed as "customer vehicles" when in fact the plaintiff had purchased them as scrap/wreck from the insurers of those vehicles.

[8] On the first day of the trial of the action at the High Court, the plaintiff applied to amend the statement of claim so as to reduce the sum claimed from RM1,241,000 to RM237,452.11. The learned JC allowed the application as the defendant did not object to the same.

Findings Of The High Court

[9] The learned JC found that the defendant failed to prove beyond reasonable doubt that the plaintiff made a fraudulent claim. In particular, the learned JC found that the defendant failed to prove the following facts:

(a) That the plaintiff has the intention to defraud the defendant in making the claim;

(b) That the plaintiff has actual knowledge that the plaintiff has suffered no loss and damage;

(c) That the plaintiff has no actual knowledge that the plaintiff's claim is false; and

(d) That the plaintiff has actual knowledge that the claim is supported by the use of fraudulent means of devices; that the plaintiff has actual knowledge that the plaintiff's claim is supported by false evidence; and that the plaintiff has actual knowledge that the plaintiff's claim is exaggerated or inflated.

[10] In the light of the recent Federal Court's ruling in *Sinnaiyah & Sons Sdn Bhd v. Damai Setia Sdn Bhd* [2015] 7 CLJ 584 which was delivered on 10 August 2015, the learned JC decided to review his oral decision given on 13 May 2015 on whether the defendant has proven that the plaintiff has made a fraudulent claim. Be that as it may, the learned JC decided on a re-assessment of the evidence that the defendant has failed to prove their assertion on a balance of probabilities.

[11] Consequent upon the abovementioned finding, the learned JC also found that the plaintiff has not breached the implied duty to act in utmost good faith.

[12] The learned JC also held that the defendant is not entitled to rely on condition 3 of the "claims conditions applicable to section 1" in the policy to repudiate liability under the policy on the following grounds:

(a) There is no evidence to prove that the fire and the loss and damage were caused by the plaintiff's wilful act or with the connivance of the plaintiff;

(b) There is no evidence to prove that the plaintiff used any fraudulent means or devices to obtain any benefit under the policy;

(c) The word "claim" in conditions 1 and 3 of the claims conditions applicable to section 1 must have the same meaning and refer to the formal insurance "claim form" (the claim form adverted in para. 5 above) which has been prepared by the defendant and filled up by the plaintiff;

(d) The claim form cannot be said to be fraudulent because the plaintiff did not state any particulars of the plaintiff's claim and the total amount of the claim in the claim form; and

(e) The plaintiff did not make any false declaration as the plaintiff did not give any particulars of the plaintiff's claim in the claim form.

Submission Of Parties

[13] Before us, learned counsel for the defendant advanced eight main points.

[14] First, the following findings by the adjusters were never challenged by the plaintiff. As such the plaintiff's claim for the loss of 69 customer vehicles held in trust is tainted with fraud for the following reasons:

(i) the owners of 20 vehicles (item nos. 2, 10, 11, 13, 14, 18, 20, 22, 23, 25, 26, 27, 31, 34, 38, 41, 42, 44, 48 & 62) could not be located at the given addresses;

(ii) nine of the vehicles (item nos. 3, 4, 5, 8, 9, 17, 27, 50 & 59) had in fact been sold by the owners to the plaintiff as scrap; as such these nine vehicles were not customer vehicles held in trust;

(iii) four of the vehicles (item nos. 12, 16, 19 & 66) were add by the owners to other second-hand dealers;

(iv) one vehicle (item no. 30) was in fact a stolen vehicle which had been handed to the financiers;

(v) 27 of the vehicles in question (item nos. 3, 5, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 23, 26, 30, 31, 32, 33, 34, 38, 39, 41, 42 & 69) were falsely misrepresented to be in excellent-good-fair condition but the vehicles in question were in fact crumpled beyond economic repair;

(vi) ten vehicles (item nos. 25, 45, 46, 47, 51, 59, 61, 66, 67 & 68) were falsely misrepresented as being damaged in the fire but discovered to have not sustained any damage; and

(vii) only six of the vehicles in question were confirmed by the adjusters to be customer vehicles held in trust and in an acceptable condition pre-fire and sustained *bona fide* damage.

[15] Second, the plaintiff perjured himself when he repeatedly maintained that the list of affected vehicles is based on values of the vehicles post-remedial work. The plaintiff's testimony is inconsistent with the fact that some of the vehicles are stated to be in "poor" condition since cars cannot be reinstated to a "poor" condition. Further, the loss adjuster's (SD3) evidence was that these scrap vehicles are incapable of refurbishment was not challenged.

[16] In this connection, the plaintiff's evidence contradicted the plaintiff's pleaded case. According to para. 7 of the plaintiff's reply, the values of the vehicles in the condition at the time of the loss and/or values in respect of "alat kenderaan" which were capable of being used as spare parts; not the value of these cars post-remedial works.

[17] Third, the learned JC's finding that the plaintiff did not cause the fire is immaterial because arson was never alleged. The learned JC erred in attaching a lot of weight on the plaintiff's police report on the fire because it is completely irrelevant to the gross and false exaggeration of the claim and to the principle of *uberrimae fidei*. The learned JC also erred in holding that the defendant failed to challenge the Fire Department's report which estimated the value of the loss at RM1,030,000. There was nothing for the defendant to challenge the Fire Department's estimation because the Fire Department's report was classified as Part B; as such the contents are disputed and not proved.

[18] Fourth, the learned JC attached undue weight to the fact that the claim form did not contain any amount or particulars of the plaintiff's claim; that as the claim form was blank, the claim form cannot be said to have been fraudulent. In this connection, the learned JC erred in holding that condition 3 of the "claims conditions applicable to section 1" applied only to the claim form and that it did not apply to the plaintiff's claims list. Learned counsel submitted that the learned JC's finding in this regard is without basis in law and in fact.

[19] Fifth, the learned JC erred in holding that the plaintiff's profitability for the three financial years preceding the fire negated the presumption of any financial distress which may constitute a motive for the plaintiff to exaggerate or inflate fraudulently its claim. Whilst financial instability is a motive to submit a false claim, it is only a peripheral consideration. There is overwhelming evidence to show that the plaintiff's claim is fraudulent.

[20] Sixth, in finding that there is no evidence to prove that fact that the plaintiff submitted a fraudulent claim, the learned JC gave undue weight to the fact that notwithstanding the defendant's police report, the plaintiff has not been charged with an offence of cheating by making a false insurance claim. Learned counsel submitted that the suggestion that the police need to prosecute the plaintiff for cheating is a necessary ingredient to show that there was a breach of *uberrimae fidei* principle is erroneous.

[21] Seventh, the learned JC erred in finding that the plaintiff is illiterate; and that as such it is more probable for the amounts to be stated erroneously rather than fraudulently in the plaintiff's claims list and the revised claim. Learned counsel argued that the fact that the lists were prepared by the plaintiff without any external help militates against the learned JC's finding of "illiteracy". The lists were prepared with full appreciation and awareness as to what was being claimed.

[22] Lastly, learned counsel submitted that the plaintiff's claim was grossly exaggerated so as to be incompatible with good faith (*Wong Cheong Kong Sdn Bhd v. Prudential Assurance Sdn Bhd* [1998] 1 CLJ 916). Notwithstanding that part of the claim is not exaggerated, the whole of the claim is tainted by the fraud. The contract remains one of good faith and the plaintiff *qua* insured is required to exercise good faith in making the claim. In making the claim, the facts are normally wholly within the insured's knowledge. The insurers are dependent on the insured exercising good faith in order to evaluate the claim (*Sen Hua Tat Furniture Sdn Bhd v. Kurnia Insurans (Malaysia) Bhd* [2009] 1 LNS 1180; Poh Chu Chai, *Law Of Insurance* (3rd edn), p. 570; *Modern Universal Sdn Bhd v. MSIG Insurance (Malaysia) Bhd* [2014] 3 CLJ 745).

[23] In reply, learned counsel for the plaintiff submitted that the plaintiff's claim is substantiated by the Fire Department's report. In finding that the defendant failed to prove that the plaintiff's claim is fraudulent, the learned JC applied both the beyond reasonable doubt and balance of probabilities test.

[24] Learned counsel for the plaintiff also argued that at a meeting on 26 December 2013 between the defendant, SD3 and the plaintiff, the plaintiff informed that it was withdrawing its claim for eight vehicles. At the material time, the plaintiff was still negotiating or bargaining with the defendant. As such, the plaintiff has no actual knowledge of the loss and damage caused by the fire as late as 26 December 2013.

[25] Further, if the plaintiff intended to make a fraudulent claim it would not have agreed to drop its claim for the damage to the building. The plaintiff was not informed by the adjuster as to what it can and cannot claim. At any rate, the valuation of the loss by the adjuster is binding on the parties pursuant to condition 5 of the "claims conditions applicable to section 1".

Contracts Of Insurance – Contracts *Uberrimae Fides*

[26] As a general rule, parties to a contract are not obliged to disclose such information as might influence the other to enter into such contract. Failure to disclose such information does not entitle the other to avoid the contract.

[27] Be that as it may, this general rule does not apply to insurance contracts because (i) the insured has in his possession all the information relating to the risk which he wants to insure, and (ii) unless such information is disclosed, the insurer would not be in a position to know of such

information. As such, the parties to a contract of insurance are under a duty to act in good faith in their dealings with one another. Hence, contracts of insurance are contracts *uberrimae fides*, a Latin phrase which means "utmost good faith."

[28] An insured is therefore under a duty to disclose any facts which will be relevant to the risk even if he is not asked any specific questions relating to them. The duty to disclose any information which is material or relevant to the risk also applies to insurers and their agents; as such, all representations made by them during the negotiations with a view to inducing the insured to accept a policy must be accurate and true (*Banque Financiere de la Cite SA v. Skandia (U.K.) Insurance Company Ltd* [1991] 2 AC 249; [1990] 2 All ER 947).

[29] The pre-contractual duties of the parties are quite settled. However, the pertinent question is whether the law recognises a continuing duty of utmost good faith over and above the obvious duty to comply with the express and implied terms of the insurance contract. In *Manifest Shipping Co Ltd v. Uni-Polaris Shipping Co Ltd, The Star Sea* [2001] Lloyd's Rep IR 247 (HL); [2003] 1 AC 469 (HL), the House of Lords held that an insured owed a continuing duty of good faith to an insurer after the formation of a contract but the duty was limited to not making a fraudulent claim.

[30] Consequently, when a claim for indemnity is made under an insurance policy, the insured is expected to observe the utmost good faith in making the claim. Indeed, it has been held that the duty not to make fraudulent claim and not to make a claim in breach of the duty of utmost good faith is an implied term of the policy (*Smith v. Queen Insurance Co* [1868] 12 NBR (1 Han) 311).

[31] It has been suggested that exaggeration in itself is not automatically fraud, but that in many cases, a fraudulent intent can properly be inferred from the presentation of a deliberately inflated claim. An exaggerated claim may be submitted by an insured innocently due to a mistake or lapses in recollection (*MacGillivary* on *Insurance Law,* 13th edn, Sweet & Maxwell para. 21-064; *Globe Trawlers Pte Ltd v. National Employers Mutual General Insurance Association Ltd & Anor* [1989] 1 CLJ 831; [1989] 2 CLJ (Rep) 924; [1989] 1 MLJ 463).

[32] It follows that if an exaggerated amount is submitted by an insured with the intention to defraud an insurer, then the entire claim may be defeated on the basis that there has been a breach of good faith by the insured (*Re Carr & The Sun Fire Insurance Company* [1897] 13 TLR 186; *Wong Cheong Kong Sdn Bhd v. Prudential Assurance Sdn Bhd (supra)*). The exercise of good faith is fundamental to the contractual relationship between the insured and the insurer.

[33] Whether any particular claim is tainted with fraudulent intent is a question of fact to be inferred from the surrounding circumstances. Making a false statement in the belief that it is true constitutes misrepresentation. However, making a false statement with the knowledge that it is false or not believing it to be true and the intention to deceive amounts to fraudulent misrepresentation. The test of fraudulent misrepresentation as enunciated by the Privy Council in *Baron Akerhielm v. Rolf De Mare* [1959] AC 789 PC is as follows:

> The question was not whether the defendant in any given case honestly believed the representation to be true in the sense assigned to it by the Court on an objective consideration of its truth or falsity, but whether he honestly believed the representation to be true in the sense which he understood it *albeit* erroneously, when it was made.

Decision

[34] In this case, the defendant's repudiation of liability under the policy is predicated on condition 3 of the general conditions which stipulates that in the event the plaintiff's claim is in "any respect fraudulent" then all benefit under the policy shall be forfeited. Condition 3 of the claims conditions applicable to section 1 in the policy provides as follows:

> If the claim be in any respect **fraudulent**, or if any **false declaration be made or used in support thereof,** or if any **fraudulent means or devices are used by the Insured** or any one acting on his behalf to obtain any benefit under this Policy; or if the **loss or damage be occasioned by wilful act, or with the connivance of the Insured;** or if the claim be made and rejected and an action or suit be not commenced within three (3) months after such rejection, or in the case on an Arbitration taking place in pursuance of the Claims Condition 10 of this Policy within three (3) months after the Arbitrator or Arbitrators or Umpire shall have made their award, all benefit under this Policy, shall be forfeited. (emphasis added)

[35] In his judgment, the learned JC cited five reasons (see para. 12 above) for holding that the defendant is not entitled to rely on condition 3. With respect, we do not agree with the reasoning of the learned JC for the following reasons. First, the fact that there is no evidence to prove arson is irrelevant because arson was not alleged by the defendant. Second, we do not agree that the word "claim" in conditions 1 and 3 of the claims conditions refers to the claim form. The word "claim" is not defined under the policy's general definition section. In our view, the word "claim" refers to any claim that an insured may make in writing to the insurer; which meaning is consonant with the tone and tenor of the claim conditions in particular and the policy as a whole. Third, the fact that the claim form which was submitted by the plaintiff did not contain the amount and particulars of the claim does not detract from the fact that the plaintiff made a claim in writing – prior to submitting the claim form on 25 June 2013, the plaintiff had submitted the plaintiff's claims list on 24 June 2013; this was followed by the plaintiff's revised claim on 9 July 2013. It follows that the lack of

particulars in the claim form cannot exonerate the plaintiff from the fact that a claim was made and to preclude a finding that the plaintiff made a fraudulent claim. The last point relates to the learned JC's finding that there is no evidence of fraudulent means or devices used by the plaintiff. As this issue relates to the question of whether the plaintiff's claim is tainted with fraud, it will be dealt with below.

[36] In the first place, it is necessary to appreciate the following background. The plaintiff's initial claim of RM1,699,850 was predicated on the particulars set out in the plaintiff's claims list. The plaintiff's claim was subsequently revised to RM1,712,560 according to the plaintiff's revised list. Eventually, the plaintiff's claim was revised to RM237,452.11 on the first day of the trial of the action in the court below. In revising its claim to RM237,452.11, the plaintiff had effectively adopted *in toto*, the figures advised by the adjusters.

[37] It is not disputed that the findings of the adjusters were never challenged by the plaintiff. Accordingly, the findings of the adjusters that except for six vehicles that were found by the adjusters to be *bona fide* claims, the claim in respect of the remaining 63 vehicles was tainted with fraud must be deemed to have been accepted.

[38] We do not think that any weight should be accorded to the plaintiff's assertion that SP1 was illiterate, ignorant and unaware of the different categories of insurance that he had insured against the risks. A perusal of the claims lists in question show that they are detailed and categorised into four heads – (i) List of affected vehicles, (ii) List of customer details, (iii) List of pre-condition of the affected vehicles, and (iv) List of value of affected vehicles. SP1 admitted that he prepared the claims lists in question without any external assistance.

[39] The central issue in this appeal relates to the question whether the claims of the plaintiff are fraudulent within the meaning of condition 3 of the claims conditions. It is abundantly clear that the plaintiff's claims as contained in the two claims lists are exaggerated for the reasons adverted to in para. 14(i)-(vii) above.

[40] On the totality of the evidence, we do not agree with the findings of the learned JC which is against the weight of the evidence. We have perused the appeal record and are unable to find any evidence to rebut the presumption that the plaintiff is not acting in good faith. On the contrary, SP1 admitted under cross-examination that there were a number of vehicles which did not sustain any damage but were nevertheless declared as damaged. Whilst exaggeration in itself is not automatically fraud, but that in many cases a fraudulent intent can properly be inferred from the presentation of a deliberately inflated claim (*Royal Boskalis Westminster v. Mountain* [1997] LRLR 523 at 593; *Chapman v. Pole* [1870] 22 LT 306 at 307; *Transthene v.*

Royal Insurance Co [1996] LRLR 32 at 44; *Superwood Holdings Plc v. Sun Alliance & London Insurance Plc* [1995] 3 IR 303; *Danepoint Ltd v. Allied Underwriting Insurance Ltd* [2006] Lloyd's Rep. IR 429 at [56]). We are, therefore, constrained to hold that the plaintiff had made a false statement in the claims lists with the knowledge that it is false.

[41] In the light of our findings, the entire claim is liable to be defeated on the ground that the plaintiff failed to exercise good faith in its dealings with the defendant. It must follow that since the plaintiff made a total claim knowing it to be a false claim, the plaintiff cannot later recover for a partial loss even if the policy applies to the loss that has happened (*Dome Mining Corp Ltd v. Drysdale* [1931] 41 Lloyd's Rep. 109; *Re Carr (supra)*). Accordingly, it will not avail the plaintiff to argue that its claim on the figure of RM237,451.11 advised by the adjusters should be allowed.

[42] For the foregoing reasons, we set aside the decision of the learned JC. The appeal is allowed with costs.